

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA

V.

RICHARD A. EVANS, M.D.

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CRIMINAL NO. 4:15-CR-00015

**DR. RICHARD A. EVANS' MOTION FOR CONTINUANCE OF FOREFEITURE
AND SENTENCING HEARINGS**

TO THE HONORABLE KENNETH HOYT:

COMES NOW, Dr. Richard Arthur Evans, Defendant, by and through Charley A. Davidson, and files this Motion for Continuance of his Forfeiture and Sentencing Hearings and would show the Court:

I.

CASE BACKGROUND

Dr. Evans was convicted by a jury on July 27, 2016. He has requested a hearing on the issue of forfeiture and a Forfeiture Hearing is currently scheduled for Tuesday, December 13th. He is currently scheduled for sentencing on January 9, 2017.

II.

BASES FOR REQUEST FOR CONTINUANCE

- A. Conflicting Trial Schedule – The undersigned is lead counsel for Dr. Mario Bertoni in United States v. Khan, et. al., Case No. H-14-194-S, pending before this Honorable Court. Dr. Bertoni's case is scheduled for jury selection and trial to begin on Tuesday, November 29, 2016. There are three defendants who are going to trial. The Government estimates that this trial will take between 2 and 2 ½ weeks to complete both the Government and defendants' cases. As such, it is not estimated that the trial will end until the latter part of the week of December 12th.

Counsel will be involved with Mr. Gerger in the defense of Dr. Evans in the upcoming Forfeiture and Sentencing Hearings. Given that counsel has been preparing to defend Dr. Bertoni and that Dr. Bertoni's trial is estimated to last even beyond the date of Dr. Evans' Forfeiture Hearing,

counsel will be unable to effectively prepare for Dr. Evans' hearings. In Dr. Evans' forfeiture case, the Government has advised that it is seeking forfeiture of at least \$2.4 million.

- B. Surgery for Counsel - The undersigned was scheduled to have hip replacement surgery on November 8, 2016; however, due to infection, that surgery was postponed. The surgeon suggested a new surgery date of November 29th; however, that date conflicted with trial in Dr. Bertoni's case. As such, the surgery is currently scheduled to occur immediately after January 1, 2017, unless the surgeon has an opening in his surgery schedule after the Bertoni trial has been completed and before the Christmas Holidays. The surgeon has advised counsel that, after the surgery, counsel should not plan to "do anything" for a period of at least two weeks and that he won't be cleared to resume normal activities for 4 to 6 weeks from the date of the surgery.
- C. The PreSentence Investigative Report in Dr. Evans' case has not been disclosed to the parties and, according to the Court's schedule, it is not scheduled to be released until November 29, 2016, the date Dr. Bertoni's trial is scheduled to begin. Objections to the Evans' PSR are due December 13, 2016, also projected to be during Dr. Bertoni's trial.

Counsel cannot effectively prepare for the Sentencing Hearing in Dr. Evans' case due to the timing of Dr. Bertoni's trial and counsel's upcoming surgery.

- D. New Counsel - Earlier this week, Dr. Evans retained David Gerger of Quinn Emanuel to help as counsel for the upcoming Forfeiture Hearing and Sentencing Hearing in this cause. A Notice of Appearance by Mr. Gerger has being filed. Counsel and the other attorneys representing Dr. Evans during trial will remain involved in his defense going forward and will work with Mr. Gerger before and during both hearings. Mr. Gerger is new to the case.. Further, while the Government's evidence at trial only identified a handful of specific patients, it is seeking forfeiture and a sentencing guideline range that is based on broader conduct than what was presented at trial.

III.

GOVERNMENT'S POSITION

Counsel has communicated with Cedric Joubert, lead prosecutor for the Government in the Sentencing Hearing, and he advises that he is unopposed to this request for a continuance; however, he opposes a continuance of 90 days of the Sentencing Hearing. Counsel has communicated with Lori Roth, lead prosecutor for the Government in the Forfeiture Hearing. Ms. Roth has indicated the Government opposes the request for a 90 day continuance of the Forfeiture Hearing but might be amenable to a shorter continuance with conditions.

WHEREFORE, Dr. Richard Evans requests a continuance of at least ninety days in his Forfeiture Hearing and Sentencing Hearing.

Respectfully Submitted,

Hanszen Laporte LLP

By: /S/ Charley A. Davidson

Charley A. Davidson
State Bar No. 05430700
11767 Katy Freeway, Suite 850
Houston, Texas 77079
(713) 522-9444 Telephone
(713) 524-2580 Facsimile

ATTORNEY FOR RICHARD A. EVANS,
M.D.

CERTIFICATE OF CONFERENCE

Counsel has conferred with AUSA Cedric Joubert and he opposes the request for a continuance of 90 days of the Sentencing Hearing but would not oppose a shorter continuance. Counsel has conferred with AUSA Lori Roth and she opposes the request for a continuance of 90 days of the Forfeiture Hearing but might not oppose a shorter continuance with certain conditions.

/S/ Charley A. Davidson
Charley A. Davidson

CERTIFICATE OF SERVICE

This is to certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this instrument via the USDC Southern District's CM/ECF system per Local Rule CV-5(a)(3) on this the ____ day of November, 2016.

/S/ Charley A. Davidson
Charley A. Davidson